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**AGREEMENT
CITY OF FRESNO, CALIFORNIA
AND FRESNO UNIFIED SCHOOL DISTRICT**

THIS AGREEMENT ("Agreement") is made and entered into effective the 1st day of July, 2012, by and between the City of Fresno, a municipal corporation (hereinafter referred to as "CITY"), and Fresno Unified School District (hereinafter referred to as "DISTRICT").

RECITALS

WHEREAS, DISTRICT recognizes that the Fresno Police Department's ("FPD") assignment of School Resource Officers (the position is described in **Exhibit A**) at certain DISTRICT high schools and a combination middle school and high school to perform regular duty law enforcement services is greatly beneficial to DISTRICT in assisting DISTRICT in providing its pupils with campuses which are safe, secure, and peaceful; and

WHEREAS, DISTRICT desires to contribute monies to CITY to partially off-set CITY'S operational costs for nine School Resource Officers and a sergeant position assigned, in part, to oversee such Officers, and thereby assist FPD in continuation of its practice of assigning School Resource Officers at certain DISTRICT high schools and a combination middle school and high school; and

WHEREAS, CITY is willing to provide nine School Resource Officers, and a sergeant position (the position is described in **Exhibit A**) assigned (in part) to oversee such Officers, to perform regular duty law enforcement services at certain DISTRICT high schools and a combination middle school and high school subject to availability of such officers.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Law Enforcement Services.

(a) CITY will provide nine School Resource Officers (hereinafter referred to as "officers") to perform regular duty law enforcement services at nine of DISTRICT's high schools and one combination middle school and high school (Edison, Roosevelt, Sunnyside, McLane, Fresno High, Hoover and Bullard high schools and the Phoenix Secondary Community Day School, a combination middle school and high school; and Cambridge and DeWolf high schools will share one of the officers) during the respective school's normal hours of operation and during the time frame that includes the standard school year which is approximately 39 weeks of the year, August through June); provided, however, (i) this does not include summer school, Thanksgiving break, Winter break, Spring break and any other days that school is not in session, and (ii) this is subject to availability of the respective officers and the sergeant assigned to oversee the officers. For purposes of this Agreement, "availability" shall be in the sole determination of FPD's Chief of Police, or his/her designated representative, taking into consideration any factors including, without limitation, health of officer, shortage of manpower, funding, and duty assignment of officer(s) or sergeant to higher priority matters. However, in specific instances of the officers taking personal leave or FPD approved law enforcement training, then other available police officers will be assigned temporarily at the respective school

or schools during such leave or training. During periods other than the standard school year and other times as the Chief of Police may require, the officers may be assigned to other police department duties. However, it shall remain the responsibility of the DISTRICT to pay the annual "Total Cost for Fresno Unified School District" as provided in Section 2 below.

(b) On an as-needed basis and subject to the availability of the officers and sergeant, DISTRICT may request such law enforcement services by the respectively assigned officer on an overtime basis immediately after the school's normal hours of operations and on a call back basis at school functions later in the evenings and on weekends. If the respective assigned officer is unavailable, then these services may be performed by another available officer. For purposes of this Agreement, "availability" shall be in the sole determination of FPD's Chief of Police, or his/her designated representative, taking into consideration any factors including, without limitation, the officer's personal availability, health of officer, shortage of manpower, funding, and duty assignment of officer(s) to higher priority matters.

(c) In the event DISTRICT requires law enforcement services for school functions in evenings or on weekends in addition to, or due to the unavailability of, the necessary number of officers or sergeant needed for the event, then DISTRICT shall obtain such services under a separate agreement with CITY for "Contract Law Enforcement Services" in accordance with Fresno Municipal Code section 2-1517.1, as it may be amended from time-to-time, and the applicable provisions (currently Chapter 8) of the then current Memorandum of Understanding between CITY and Fresno Police Officers Association (Non-Supervisory Police-Unit 4) as it may be amended from time-to-time. Upon entry into this Agreement for School Resource Officer services, DISTRICT shall designate a primary and single point of contact for purposes of securing any separate "Contract Law Enforcement Services" agreement and provide FPD, in writing, with the name and contact information of DISTRICT'S designee. DISTRICT shall provide any change in the name and contact information during the term of this Agreement by written notice to FPD.

(d) The parties agree that CITY retains control over assignments, wages, and other terms and conditions of employment by CITY of officers and the sergeant position. DISTRICT acknowledges that the officers and sergeant are held to the requirements of the law and FPD policy. DISTRICT agrees that it shall not have authority to direct the officer's, or sergeant's, law enforcement activity. DISTRICT will immediately notify FPD of any concerns regarding such activity.

2. DISTRICT Contribution.

(a) To off-set 100% of two of the officers, 75% of seven of the officers and 90% of the sergeant salaries and benefits; 33% of operation and maintenance of ten patrol vehicles; and the balance of FPD's operational costs for the regular duty law enforcement services at DISTRICT high schools pursuant to Section 1(a), above, DISTRICT shall pay CITY the respective annual "Total Cost for Fresno Unified School District," as set forth in **Exhibit B**, in two equal payments on the following dates of this Agreement: October 1st and March 1st. (Example: For the first year of this Agreement, this would be two equal payments of \$495,192.) For purposes of this Agreement, "operational costs" include (i) the salaries and all applicable benefits (including, without limitation, medicare, health and welfare, uniform, pension, workers compensation premium and POST Certificate Premium Pay that are actually provided during the respective year of this Agreement) of the officers and one FPD sergeant position, (ii) the operation and maintenance of ten patrol vehicles, and (iii) administrative fees; as are set forth in more detail in **Exhibit B**.

(b) DISTRICT shall reimburse CITY on an actual cost basis for the annual salary and benefits of the officers, and any sergeant, assigned pursuant to Section 1(b), above. DISTRICT shall reimburse CITY monthly, in arrears, no later than 15 days upon receipt of an invoice from CITY. CITY shall be paid in accordance with the overtime and call back rates then in effect at the time of performance as governed by the then current Memorandum of Understanding between CITY and Fresno Police Officers Association (Non-Supervisory Police-Unit 4) as may be amended (e.g., upon execution of this Agreement, overtime is paid at one and one-half times the base rate of pay, and call back rates are a minimum of 3 hours at the rate of time and one-half).

(c) DISTRICT shall provide office space for officers at their respective schools.

3. Term of Agreement. It is the intent of the parties that the term of this Agreement begin July 1, 2012, effective as to all terms and conditions of the Agreement, and end on June 30, 2015, unless terminated earlier in accordance with this Agreement.

4. Termination of Agreement.

(a) Either party may terminate this Agreement without cause upon 30 calendar days prior written notice to the other party.

(b) This Agreement may be terminated immediately by either party upon 7 calendar days prior written notice should the other party fail substantially to observe, fulfill or perform any obligation, covenant, term or condition in accordance with this Agreement. A party will have failed substantially to observe, fulfill or perform any obligation, covenant, term or condition of this Agreement, if such failure is not cured within such 7 calendar days prior written notice and this shall constitute a material default and breach of this Agreement. The party terminating the Agreement may exercise any right, remedy (in law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law, or proceed by appropriate court action to enforce the terms of the Agreement, or to recover direct, indirect, consequential or incidental damages for the breach of the Agreement.

(c) No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

5. Indemnification.

(a) DISTRICT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the DISTRICT, CITY or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts, omissions or willful misconduct of DISTRICT or any of its officers, directors, trustees, employees, agents or volunteers in the performance of this Agreement.

(b) CITY shall indemnify, hold harmless and defend DISTRICT and each of its officers, directors, trustees, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability,

including but not limited to personal injury, death at any time and property damage) incurred by CITY, DISTRICT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts, omissions or willful misconduct of CITY or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

(c) In the event of concurrent negligence on the part of DISTRICT or any of its officers, directors, trustees, employees, agents or volunteers, and CITY or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

(d) This section shall survive termination or expiration of this Agreement.

6. Insurance. It is understood and agreed that DISTRICT and CITY maintain insurance policies or self-insurance programs to fund their respective liabilities. Evidence of Insurance, Certificates of Insurance or other similar documentation shall not be required of either party under this Agreement.

7. Nondiscrimination. Neither party shall employ discriminatory practices in their respective performance under this Agreement on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

8. Independent Contractor and Not a Partnership. For purposes of this Agreement, CITY and DISTRICT shall act in an independent capacity and not as officers or employees or agents of the other. Nothing in this Agreement establishes, constitutes, or will be construed as establishing or constituting a partnership or agency or employment relationship between CITY and DISTRICT. Officers providing services under this Agreement shall remain the employees of CITY, and shall not be employees of DISTRICT.

9. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice.

10. Binding. Once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

11. Assignment. Neither party may assign or transfer, by operation of law or otherwise, all or any of its rights or obligations under this Agreement without the prior written consent of the other party.

12. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may

be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

13. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

14. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

15. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

16. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

17. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

18. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, attached and incorporated into and made a part of this Agreement.

19. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

20. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

21. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and DISTRICT.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a municipal corporation

By: 

Jerry Dyer, Chief of Police
Fresno Police Department

FRESNO UNIFIED SCHOOL DISTRICT

By: 

Ruth F. Quinto,
Associate Superintendent/CFO
Fresno Unified School District

ATTEST:

YVONNE SPENCE, CMC

City Clerk

By:  10/22/12
Deputy

APPROVED AS TO FORM:


By: 

Andrew Delatorre,
Director of Risk Management

APPROVED AS TO FORM:

JAMES C. SANCHEZ

City Attorney

By:  9/14/12
Nancy A. Algier Date
Senior Deputy

Addresses:

CITY:

Fresno Police Department
Attention: Jerry Dyer, Chief of Police
2326 Fresno Street
Fresno, CA 93721

DISTRICT:

Fresno Unified School District
Attention: Michael E. Hanson,
Superintendent
2309 Tulare Street
Fresno, California 93721

Attachments:

Exhibit A - SRO and Sergeant Position Descriptions
Exhibit B - Cost Breakdown for Police Services

Exhibit A
Position Descriptions

School Resource Officer

The Fresno Police Department School Resource Officer (SRO) works under the direct supervision of the Fresno Police Department (FPD).

The basic duties of the SRO are to operate as a Peace Officer to assist site staff with crime and safety issues. Guidelines for SRO duties are as follows:

- Be a visible, active, and high profile police officer on a school campus. You are on campus to provide a presence to promote safety and positive relationships. The presence of a uniformed officer on campus gives the environment a feeling of safety and security.
- Provide a link between the school community and the FPD. Get to know the students and teachers. Interaction with staff and students is a high priority. If asked, help the teachers with material to help explain your job and the criminal justice system.
- Children need good role models. As an officer, this should be one of your goals. Help break down barriers between the police and the students.
- Walk the halls and common areas of the campus, particularly during times of high student movement to provide crime prevention and assist with student/staff safety.
- Detect and deter criminal activity, take reports of incidents, and refer matters of law enforcement concern to the appropriate authority. If it is a police matter, it should be referred to police supervision. A matter more closely aligned with school district issues should be referred to school administrative staff.

Investigate crime and make safety recommendations to site staff. Work with the principal toward making the school safer for both yourself and the people on campus. Fit your activities into the goals of the site administration. Commitment to the goal of safe schools and good law enforcement should be your mission.

Sergeant

The FPD sergeant will be responsible, in part, for the supervision of each SRO and making periodic visits to school campuses. The sergeant's duties, when available, will include working closely with school administration, and serving as the liaison between FUSD and FPD.

Exhibit B

Cost Breakdown of Police Services to the Fresno Unified School District (Effective July 1, 2012 – June 30, 2013)

<u>Straight-Time Costs per City fiscal year - "F" Step Police Officer</u>	<u>2012-2013</u>	<u>2013-2014</u>	<u>2014-2015</u>
40 hours per week for 52 weeks Police Officer hourly wage * @	\$ 55.41		
Total Straight-Time Costs for one Police Officer 12 months @ 100%	\$115,261.00		
 <u>Straight-Time Costs per City fiscal year - "F" Step Police Sergeant</u>			
40 hours per week for 52 weeks Police Sergeant hourly wage * @	\$ 64.70		
Total Straight-Time Costs for one Police Officer 12 months @ 100%	\$134,568.00		
 <u>Overtime Costs Optional</u>			
Hourly Rate Police Officer **	\$ 55.73		
Hourly Rate Police Sergeant**	\$ 67.19		
Total overtime costs dependent upon number of hours utilized.			
 Total Straight-Time Costs for 7 Police Officers (12 months @ 75%)	\$605,121.00		
Total Straight-Time Costs for two (2) Police Officers (12 months @ 100%)	\$230,522.00		
Total Straight-Time Costs for one (1) Police Sergeant (12 months @ 90%)	\$121,111.00		
 <u>Vehicle Costs</u>			
Operations and Maintenance for 1 vehicle @ 33.33%	\$ 3,328.00/year		
Operations and Maintenance for 10 vehicles @ 33.333%	\$ 33,280.00		
 Total Salary Costs for Period	\$956,754.00		
Total Vehicle Costs for Period	\$ 33,280.00		
Administrative Fee	\$ 350.00		
 Total Cost for Fresno Unified School District	<u>\$990,384.00</u>	<u>\$***</u>	<u>\$***</u>

*Includes salary and all applicable benefits (including, without limitation, medicare, health and welfare, uniform, pension, workers compensation premium and POST Certificate Premium Pay that are actually provided during the respective year of this Agreement)

** Includes salary and medicare

*** The respective dollar amount for 2013-2014 and 2014-2015 shall be determined by the Fresno Police Department as for 2012-2013, and shall be based upon the straight-time hourly wage rate, overtime hourly rate and vehicle operations and maintenance cost in effect July 1 for the respective year. The Administrative Fee shall remain \$350.00 for each year. The Fresno Police Department will notify Fresno Unified School District, in writing, of its determination by May 31st before the respective year.

Fresno Unified School District

Contract Checklist

1. Vendor: City of Fresno Police Department 2326 Fresno Street
Name Fresno, CA 93721 Address
Phone Number Jerry Dyer, Chief of Police Contact

2. Term (Duration): July 01, 2012 through June 30, 2013.
(See page ____ of proposed contract.)

3. Contract Administrator: Andrew DeLaTorre
Name
Benefits & Risk Management 457-3596
Site Telephone Number

4. Budget: _____

5. Insurance/Indemnity (In accordance
With FUSD guidelines) refer to _____ Yes ☐ No ☐
Contract/Proposal page(s): _____

6. Miscellaneous Administrative Provisions
(In accordance with FUSD guidelines) Yes ☐ No ☐
Refer to Contract/Proposal page(s): _____

7. Annual Cost: \$ 990,384 (Contract will not be authorized to exceed this amount w/o

8. Finger Print Requirements: All individuals providing services Yes ☐ No ☐
under this contract are in compliance with the requirements
of the "Michelle Montoya" Act, as required therein.

9. Scope of Work Summary: City of Fresno will provide nine (9) School Resource Officers (SRO's) to conduct daily regular duty law enforcement services at Fresno Unified School District.

10. Date Item is to appear on Board of Education Agenda August 08, 2012 Item# A-9
(Contracts of \$15,000 or more)

Reviewed and approved by Cabinet Level Officer:

Reviewed and approved by Executive Director, Purchasing: _____
Signature Required Date

Reviewed and approved by Director, Risk Management: _____
Date

Date submitted to CFO'S office for review _____